

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 90-588-G - ORDER NO. 94-1244 ✓

DECEMBER 7, 1994

IN RE: South Carolina Pipeline Corporation -     ) ORDER GRANTING,  
Maximum Rates for Industrial Customers     ) IN PART, AND  
   ) DENYING, IN PART,  
   ) PETITION AND  
   ) MOTION

This matter is before the Public Service Commission of South Carolina (the Commission) on the South Carolina Energy Users Committee's (the SCEUC's) July 13, 1994, Petition and Motion (the Motion). The Motion petitions the Commission for eight causes of relief. On November 2, 1994, the Commission heard oral arguments on the Motion from various parties. After thorough consideration of the arguments presented and the applicable law, the Commission grants, in part, and denies, in part, the relief sought by the SCEUC.

The Commission finds that a brief recitation of the history of this proceeding is necessary for an understanding of its ruling. In 1990, South Carolina Pipeline Corporation (Pipeline) filed an Application requesting a reduction in its sale-for-resale rates. The Commission assigned the Application Docket No. 90-204-G. The SCEUC, among others, intervened as a party in the proceeding. After an evidentiary hearing, the Commission issued

Order No. 90-729 (August 8, 1990). In that Order, the Commission affirmed the practice of establishing industrial rates through negotiation. The Order further stated as follows:

The Commission finds that further evidence should be submitted concerning the maximum rates previously approved by the Commission for the industrial customers of Pipeline. The Commission hereby orders that a hearing be scheduled to review these maximum rate levels and to make a determination as to whether or not such rate levels are appropriate and consistent with the pricing methodology approved in this proceeding. The Commission has previously ruled in this order on the use of rate of return and cost of service to set industrial rates; and thus has reaffirmed its long standing policy in regard to Pipeline of allowing negotiated rates as to its industrial customers based on market conditions. Therefore, the Commission will not consider evidence on the issues of rate of return nor cost of service in setting the maximum rates for industrial customers. All parties will be given notice of this hearing at a later date. Order No. 90-729, p. 40.

Thereafter, the SCEUC filed a Motion for Stay and Petition for Reconsideration. The SCEUC sought a stay of the hearing which had been scheduled for consideration of the level of industrial rates in Docket No. 90-588-G until completion of judicial review of Docket No. 90-204-G. The Commission granted the SCEUC's Motion for a Stay but denied its Petition for Reconsideration. See, Order No. 90-1010 (October 17, 1990).

The SCEUC appealed.<sup>1</sup> The Circuit Court reversed the Commission's Orders. Both Pipeline and the Commission appealed. The South Carolina Supreme Court reversed the Circuit Court and reinstated Commission Order Nos. 90-729 and 90-1010. Nucor Steel

---

1. This Order does not discuss Nucor Steel, a Division of Nucor Corporation's appeal.

v. South Carolina Public Service Commission, \_\_\_ S.C. \_\_\_, 439 S.E.2d 270 (1994). The Supreme Court found that the SCEUC had not exhausted its administrative remedies since it had not proceeded with the hearing in Docket No. 90-588-G.

Subsequently, the Commission lifted its stay in Docket No. 90-588-G and rescheduled the hearing on the level of industrial rates. Thereafter, the SCEUC filed this Motion. The Commission will separately address each issue raised by the Motion.

1. The SCEUC moves for recognition that jurisdiction of all matters concerning Docket No. 90-204-G is with the Commission. The appeal from Docket No. 90-204-G has been remitted from the Circuit Court to the Commission. Clearly, the Commission has jurisdiction over all matters in Docket No. 90-204-G and, therefore, grants the Motion in this regard.

2. The SCEUC asks the Commission to consolidate outstanding matters in Docket No. 90-204-G with this Docket. The SCEUC has not specified any outstanding matters in Docket No. 90-204-G and the Commission is unaware of any outstanding matters. Therefore, the Commission concludes there are no issues which could be consolidated and denies this part of the Motion.

3. The SCEUC asks the Commission to find that the rates for the sale-for-resale customers of Pipeline will not be affected by the proceedings in this Docket. Since there has been no evidentiary hearing in this Docket and no ruling, the Commission does not know what affect, if any, the outcome of this Docket will have on the rates of Pipeline's sale-for-resale customers.

Therefore, the Commission denies this part of the Motion.

4. The SCEUC requests the Commission have its Staff conduct rate case audits of Pipeline for the years of 1989, 1990, 1991, 1992, 1993, and 1994 to the present. The SCEUC contends that the stay it obtained in 1990 "maintained the status quo through the time of the appeals," and, therefore, presumably, the Commission will be considering the proper level of Pipeline's industrial caps from 1988<sup>2</sup> to the present. Tr. p. 13, lines 13-15. The Commission denies this request.

First, the Commission finds that the only subject of the pending proceeding is the validity of the level of Pipeline's current caps for its industrial customers and whether such rate levels are appropriate. Therefore, a rate case audit for past years is irrelevant.

Second, Order No. 90-1010 which granted the SCEUC's Motion for Stay specified that it would "continue the proceedings in Docket No. 90-588-G, pending judicial review of this Order." See, Order No. 90-1010, p. 4. The Commission concludes that the SCEUC did not request a stay of the test period in its Motion for Stay. By granting a continuance of the hearing, the Commission did not stay the review period for the hearing. Moreover, the Commission finds it would be patently unfair to grant the SCEUC its requested relief when its own appeal was lost for, among other reasons, failure to exhaust the administrative remedies which the Commission had

---

2. The test year in Docket No. 90-204-G was the twelve months ending December 31, 1988.

provided in 1990.

5. The SCEUC requests the Commission rescind Order No. 94-478 (May 19, 1994) which lifted the stay in this matter and provide an opportunity for all parties to be heard prior to the stay's dissolution. The Commission denies this request. The Commission concludes that since judicial review of Order Nos. 90-729 and 90-1010 in Docket No. 90-204-G are complete, it was appropriate to lift the stay.

6. The SCEUC requests the Commission provide public notice of this proceeding without reference to the parties. The June 1, 1994, notice for this proceeding listed five (5) parties who had previously intervened in this docket and stated they were not required to file additional Petitions to Intervene. The Commission finds its notice is legally sufficient and administratively efficient in that it eliminates the refiling of Petitions to Intervene. Consequently, the Commission denies this part of the Petition.

7. The SCEUC requests the Commission schedule a hearing in this matter. The Commission has already scheduled this matter for a hearing and, therefore, the relief the SCEUC requests has already been provided.

Further, the SCEUC requests the Commission establish that there are no limitations to the presentation of evidence in this proceeding. The Commission concludes that, at this time, the only preconditions to the presentation of evidence are those which were previously established by the Commission in Order No. 90-729 which

was reinstated by the Supreme Court. As noted previously, "the Commission will not consider evidence on the issues of rate of return nor cost of service in setting the maximum rates for industrial customers." Order No. 90-729, p. 40. Therefore, the Commission denies this portion of the SCEUC's Motion.

8. Finally, the SCEUC seeks confirmation that it is an intervenor in Docket Nos. 90-204-G and 90-588-G. The Commission grants this request.

Clearly, the SCEUC was an intervenor in Docket No. 90-204-G. The SCEUC participated in the evidentiary hearing in Docket No. 90-204-G; the Commission ruled on various issues presented by the SCEUC in Docket No. 90-204-G; and the SCEUC prosecuted appeals from Orders issued in Docket No. 90-204-G.

Further, the Commission concludes that the SCEUC is an intervenor in Docket No. 90-588-G. Although the SCEUC has not filed a document specifically requesting permission to intervene, the elements required for intervention are included in the SCEUC's Motion. See, 26 S.C. Regs. 103-836(3)(1976). Moreover, Docket No. 90-588-G was established specifically to address the industrial issues raised by the SCEUC and others in Docket No. 90-204-G; the Commission stayed the hearing in Docket No. 90-588-G at the SCEUC's request; and the Commission has accepted and ruled on the SCEUC's current Motion in Docket No. 90-588-G.<sup>3</sup> Accordingly, the

---

3. The SCEUC filed this Motion on the last day of intervention.

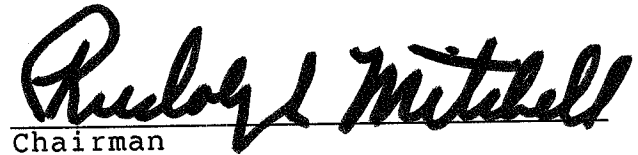
DOCKET NO. 90-588-G - ORDER NO. 94-1244  
DECEMBER 7, 1994  
PAGE 7

---

Commission concludes that the SCEUC is an intervenor in this proceeding.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)